

ORDER SHEET
AP-COM/264/2025
IN THE HIGH COURT AT CALCUTTA
ORDINARY ORIGINAL CIVIL JURISDICTION
COMMERCIAL DIVISION

M/S MALATHY CONSTRUCTIONS
VS
BRIDGE AND ROOF CO. (INDIA) LTD.

BEFORE:
The Hon'ble JUSTICE SHAMPA SARKAR
Date: 10th April, 2025.

Appearance:
Mr. Anubhav Sinha, Adv.
Ms. Shruti Shaw, Adv.
Ms. S. Das, Adv.
...for the petitioner

Mr. Sanjib Dawn, Adv.
...for the respondent

The Court:

1. The petitioner prays for appointment of a learned Arbitrator on the strength of a work order dated November 27, 2017. It appears that the work order itself is a contract as has been specifically provided therein.

The said provision is quoted below:

“With reference to the above documents exchanged and discussions you had with us, we are issuing this Work-Order (hereinafter referred to as the “Contract”) formally awarding the above mentioned works to you at an Estimated Price of ₹1,43,67,757/= (Rupees One crore forty three lakh sixty seven thousand seven hundred fifty seven only) based on the “Schedule

of Rates” furnished in Annexure-“A” attached herewith and subject to the same terms & conditions etc. as given in the TD.”

2. It also appears that the work order was issued upon a condition that all communications between the parties prior to the issuance of the work order stood withdrawn. It is the specific case of the respondent that the work order, which was the contract, did not contain an arbitration clause.
3. Mr. Sinha submits that the work order was pursuant to a tender notice. The tender document is not available. From the tender document, the arbitration clause could be traced. This is a submission, which is not backed by any document. However, it is for the petitioner to, prima facie, satisfy the court about the existence of an arbitration agreement. In this case, the petitioner has not been able to discharge such obligation.
4. Under such circumstances, the referral court cannot go beyond the work order, which, according to the respondent, was treated as a contract and did not contain any arbitration clause. If on the selfsame cause of action, in future, the petitioner is able to trace out the arbitration agreement which petitioner seeks to rely upon, the petitioner is at liberty to take steps in accordance with law, and subject to the law of limitation.
5. AP-COM/264/2025 is, accordingly, dismissed.

(SHAMPA SARKAR, J.)